

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KISII

ELCLMISC No. E017 OF 2025

ZIPORAH OURU & 3 OTHERS APPLICANTS

VERSUS

ABISIBA NYANDUKO BICHANGA RESPONDENT

RULING

1. The application before me is one dated 14 July 2025 filed by the defendants in the suit Etago MCELC No. E012 of 2024. They seek an order to transfer the said case to this court for disposal. The reason given is that they have raised a counterclaim for adverse possession, which cannot be heard by the Magistrates' Court for want of jurisdiction.
2. The application is not opposed and I have given it due consideration.
3. I have not seen the plaint in the said case Etago MCELC No.E012 of 2024 and it is difficult for me to know what the claim against the applicants in that case is. Nevertheless, the applicants have annexed a copy of their defence and counterclaim. From it, I see that the subject matter of the case is the land parcel South Mugirango/Nyataaro/2296. I have seen the counterclaim, and among the prayers sought, is a declaration that the applicants have been in peaceful and uninterrupted occupation of the suit land for over 12 years, and have acquired the same by way of adverse possession.
4. The Court of Appeal in the case of *Pauline Chemuge Sugawara vs Nairuko Ene Mutarakwa Kiruti & 3 Others, Court of Appeal at Nairobi, Civil Appeal No. E141 of 2022* held that the Magistrates' Courts have no jurisdiction to entertain a claim for adverse possession.

5. I cannot fault the applicants for finding themselves in the Magistrates' Court, because they were sued, but their defence and counterclaim ousts the jurisdiction of the court, and I do not think it can be argued that the main suit itself was commenced in a court that was devoid of jurisdiction. It is the defence and counterclaim which has ousted jurisdiction from the Magistrates' Court.
6. I am therefore persuaded to allow this application and order the transfer of the suit Etago MCELC No. E012 of 2024 to the superior Environment and Land Court for disposal.
7. There will be no orders as to the costs of this application.
8. Orders accordingly.

DATED AND DELIVERED THIS 25 DAY OF NOVEMBER 2025

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

Delivered in presence of :

No appearance for M/s Ochieng Adingo & Co for the applicants

No appearance for M/s C. Cheruiyot & Co for the respondent

Court Assistant – Michael Oyuko